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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

KELLEY JESSOP, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

DALLIN LARSEN, an individual, HENRY
MARSH, an individual, RANDY LARSEN, an
individual, MACHIEL KENNEDY, an
individual, DOES 1-10, and BANKERS TRUST
COMPANY, a Delaware corporation,

Defendants,

and related Third Party Complaint.

**BANKERS TRUST COMPANY'S
REPLY IN SUPPORT OF MOTION TO
STRIKE PLAINTIFF'S JURY DEMAND**

Civil No. 2:14-cv-00916

Honorable Bruce S. Jenkins

Defendant Bankers Trust Company of South Dakota, improperly named in the Complaint as “Bankers Trust Company, a Delaware Corporation,” (“BTC”), by counsel, hereby submits this Reply in Support of its Motion to Strike Plaintiff’s Jury Trial Demand, Dkt. # 88. BTC seeks an order of this Court striking the Plaintiff’s jury demand because under applicable ERISA law, Plaintiff is not entitled to a jury trial for the ERISA claims set forth in his putative Class Action Complaint (“Complaint”).

1. On December 19, 2014, Plaintiff filed his Complaint. In his Complaint, Plaintiff demanded “a jury trial on all issues raised by the Complaint and so triable.” (Pl.’s Complaint, at 34).

2. On May 19, 2015, BTC filed its Motion to Strike Plaintiff’s Jury Trial Demand (“Motion to Strike”) on the grounds that Plaintiff’s ERISA claims are deemed equitable in nature and are not afforded jury trials. (Doc. # 88). (Def.’s Mot. to Strike, at 2-3).

3. On June 5, 2015, Plaintiff filed his Opposition to BTC’s Motion to Strike (“Opposition”). Plaintiff’s Opposition essentially ignores the entire weight of authority that jury demands in ERISA cases are not permitted and must be stricken. Plaintiff argues that applicable case in this circuit was wrongly decided and should be ignored.

4. As stated in BTC’s Motion to Strike, nine (9) other circuits as well as the district courts within this circuit have consistently held, without distinction, that there is simply no right to a jury trial for ERISA claims. Further, a district court in this circuit has specifically held that if confronted with the question, the Tenth Circuit would not grant a plaintiff a right to a jury trial on ERISA claims. (See Def.’s Motion to Strike, at 3 citing *In re YRC Worldwide*, 2010 WL 4920919, at *6).

5. Plaintiff's Opposition recites cases discussing general constitutional principles regarding jury trials. However, these cases do not address whether jury trials are permitted for ERISA claims. They merely describe general Seventh Amendment concepts over which there is no dispute.

6. Plaintiff's Opposition also cites a single case from the Northern District of Georgia to support his demand for a jury trial. (*See* Opposition, at 5 citing *Chao v. Meixner*, No. 1:07-cv-0595-WSD, 2007 WL 4225069, at *5 (N.D. Ga. Nov. 27, 2007)). This case, of course, is not binding in this district and is a single outlier from the significant body of authority from this district and other circuits which hold precisely the opposite.¹ Plaintiff fails to address the fact that all three (3) of his claims are brought under ERISA, and all such claims are deemed in this circuit (and all others) to be equitable in nature. *E.g., In re YRC Worldwide, Inc. ERISA Litigation*, No. 09-2593-JWL, 2010 WL 4920919, at *5 (D. Kan. Nov. 29, 2010) (unpublished). There simply is no right to a jury trial for such claims. *Id.*

7. Plaintiff's Opposition also makes no mention of this circuit's decision in *Graham v. Hartford Live & Acc. Ins. Co.*, 589 F.3d 1345 (10th Cir. 2009) which holds that claims which are equitable in nature are not afforded the right to a jury trial.

8. In summary, nine (9) other circuits as well as the district courts within this circuit have consistently held there is no right to a jury trial for ERISA claims such as those brought by the Plaintiff. Plaintiff's ERISA claims are equitable in nature and Plaintiff's jury trial demand should therefore be stricken.

¹ Unlike the present action brought by a plan participant seeking class action treatment, the plaintiff in *Chao* was the Department of Labor bringing an enforcement suit under ERISA § 502(a)(2) and § 502(a)(5).

WHEREFORE, Defendant Bankers Trust Company of South Dakota, through counsel, prays this Court strike Plaintiff Kelly Jessop's jury trial demand, and for all other relief proper in the premises.

DATED this 22nd day of June, 2015.

Respectfully submitted,

/s/ R. Willis Orton

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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